EMPLOYMENT TRIBUNALS

Claimant: **Mr R Peposhi**

Respondents: **(1) GoCrisis Ltd**

(2) Woven Solutions (in administration)

Heard at: Reading (by CVP) **On: 27 & 28 September 2023**

Before: Employment Judge Reindorf KC

Ms E Gibson

Dr C Whitehouse

Representation

For the Claimant: In person

For the First Respondent: Ms S Sodhi (consultant)

For the Second Respondent: No appearance or representation

JUDGMENT

1. The Claimant's application for an Anonymity Order pursuant to Rule 50(3)(b) of the Employment Tribunals (Constitution and Rules of Procedure) 2013 is refused.
2. The Claimant's application for a postponement of the final hearing is refused.

ORDERS

3. The final hearing is postponed of the Tribunal's own motion.

REASONS

Contents

Introduction

4. The Claimant entered into ACAS Early Conciliation against the First Respondent on 25 July 2022 and against the Second Respondent on 9 August 2022. ACAS EC certificates were issued on 5 September 2022 for the First Respondent and 23 August 2022 for the Second Respondent. The Claimant presented his claim form on 4 October 2022 complaining of unfair dismissal and disability discrimination.

5. At a Preliminary Hearing held by telephone on 12 April 2023 the issues in the case were identified, case management orders were made and the final hearing was listed for three days from 27 to 29 September 2023 by CVP. The Case Management Orders were sent to the parties on 16 May 2023.

6. On 17 May 2023 the Second Respondent informed the Tribunal that it was in administration and would not be taking further part in the proceedings.

7. By email on 30 August 2023 the Claimant applied to amend his claim to add a whistleblowing complaint. The First Respondent objected by email on 8 September 2023, and requested that the final hearing be converted into a Preliminary Hearing. The parties were informed by the Tribunal that this matter would be considered at the outset of the hearing on 27 September 2023.

Issues

8. The issues identified at the Preliminary Hearing on 12 April 2023 are as follows:

Employment status

1.1 The discrimination claims are brought against the respondents as follows:

1.1.1 Against the first respondent, under s41 EqA. The claimant was a contract worker, and the first respondent was the principal.

1.1.2 Against the second respondent, under s39 EqA. The claimant was the second respondent's employee.

Time limits

2.1 Given the date the claim form was presented and the dates of early conciliation, any complaint against the first respondent that happened before 26 April 2022, and any complaint against the second respondent that happened before 10 May 2022 may not have been brought in time.

2.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

2.2.2 If not, was there conduct extending over a period?

2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

2.2.4.1 Why were the complaints not made to the Tribunal in time?

2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

Disability

3.1 It is common ground amongst the parties that the claimant was disabled by way of complete hearing loss in his left ear at all relevant times.

Discrimination arising from disability (Equality Act 2010 section 15)

4.1 Did the respondents treat the claimant unfavourably by:

4.1.1 In a meeting at the end of the day on 29 April 2022, Robert Rowntree (Incident Commander of the first respondent), informed the claimant that a complaint had been made about how loudly the claimant talks in the office.

4.1.2 On 3 May 2022, Adrian Rodgers (employee of the first respondent) declared, in front of the office, that either the claimant or Mohammed Hersi would have to move seats as they were talking loudly. He then asked everyone for a show of hands who wanted the Claimant to move.

4.1.3 On 3 May 2022, the claimant was moved to the corner of the room, so far away from everyone that he could not hear anything that anyone said to him. His desk was also positioned so that his right ear faced away from the team

4.1.4 On 6 May 2022, Deborah Sweeney (employee of the second respondent) informed the claimant that there had been multiple complaints about the claimant's volume, and dismissed him on that basis. The claimant says that subsequently he received a letter informing him that there were other reasons for dismissal, but on the day itself, he was only told that it was his volume that was the issue. The claimant's dismissal led to him losing the opportunity to secure a permanent contract directly with British Airways (the client of the first respondent).

4.2 Did the claimant's tendency to talk loudly arise in consequence of his disability.

4.3 Was the unfavourable treatment because of the claimant's tendency to talk loudly?

4.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondents will clarify their position on this when they provide Amended Responses.

4.5 The Tribunal will decide in particular:

4.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.5.2 could something less discriminatory have been done instead;

4.5.3 how should the needs of the claimant and the respondent be balanced?

4.6 Did the respondents know or could they reasonably have been expected to know that the claimant had the disability? if so, from what date?

Harassment related to disability (Equality Act 2010 section 26)

5.1 Did the respondents do the following things:

5.1.1 The claimant relies upon the same treatment as set out above at issue 4.1.1 - 4.1.4.

5.2 If so, was that unwanted conduct?

5.3 Did it relate to disability?

5.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Remedy for discrimination

6.1 What financial losses has the discrimination caused the claimant?

6.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

6.3 If not, for what period of loss should the claimant be compensated?

6.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

6.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that? The claimant says that the alleged discrimination exacerbated his anxiety.

6.6 Should interest be awarded? How much?

The Hearing

9. The case came before us for a final hearing.

10. The hearing was conducted remotely by video (CVP). The Respondent provided a trial bundle consisting of 389 pages. The Claimant said that the bundle was not agreed. Witness statements were provided by the Claimant for himself and for Mohammed Hersi, a former colleague. The Respondent provided statements for Adrian Rogers (VP of Client Services), Deborah Sweeney (former Operational Training Manager of the Second Respondent), Elizabeth Hatch (Independent Contractor), Elmarie Marais (Founder and CEO), John Griffiths (Executive Assistant to the CEO), Marle Rodgers (GoResponder and Training Manager) and Sabah Khan (GoResponder and Contact Centre Agent).

11. At the beginning of the hearing the Tribunal enquired whether the Claimant needed any adjustments to enable him to participate effectively given his disability. He stated that he did not.

The Claimant's application for an Anonymity Order

12. On the first day of the hearing the Claimant applied for an anonymity order to prevent disclosure of his name in these proceedings. He had not made this application previously and had not submitted any written grounds or documentary evidence in support of the application.

13. The Tribunal heard submissions from the parties on the application.

14. The Claimant relied on the following grounds:

    14.1. He thought that future employers would be prejudiced against employing him if he was named in the judgment.

    14.2. He thought that his brother's employment prospects would also be damaged.

    14.3. He has a disability (total deafness in his left ear).

15. On the first Ground, the Claimant said that he works in the aviation sector, which is a specialised industry. He has worked in the sector for four years. He thought

that if an employer came across the case and saw his name – which is an unusual one – it would post him in a negative light.

16. On the second Ground, the Claimant said his brother also worked in aviation, but in a more specialist role for which he had studied and trained for several years. He said that his brother is subjected to enhanced DBS checking and CTC referencing, which involves checking the backgrounds of friends and family members. He argued that if a potential employer discovered that he had brought this case it might lead them to think that his brother "would be willing to reveal secrets in a legal setting should he feel he was slighted against".

17. On the third Ground the Claimant said that in the past he kept his disability secret, except for friends and family. He had suffered bullying because of it as a child. He said that he now tells other people, such as employers, but only discreetly and on a "need to know" basis. He feels that his disability can make people think that he is arrogant or stupid.

18. In her submissions on the application, Ms Sodhi for the Respondent argued that the application should not be granted. She relied on the public interest in open justice, and reminded the Tribunal that the Claimant had not made the application until the morning of the final hearing.

The law on privacy orders in the Employment Tribunal

19. The default position under Rule 59 of the Employment Tribunals (Constitution and Rules of Procedure) 2013 ("the ET Rules") is that any final Employment Tribunal hearing should be held in public and without any restrictions on the right of the public and the press to view or report on proceedings.

20. In *Clifford v Millicom Services UK Ltd* [2023] ICR 663 the Court of Appeal emphasised that ETs are subject to "the strong common law principle that justice should be administered in public and fully reportable save in certain limited circumstances". This is the principle of open justice.

21. In *British Broadcasting Corporation v Roden* [2015] IRLR 627 EAT, Simler J stated that:

> *The default position in the public interest is that judgments of tribunals should be published in full, including the names of the parties. That principle promotes confidence in the administration of justice and the rule of law. The reporting of court proceedings in full without restriction is a particularly important aspect of the principle and withholding a party's name is an obvious derogation from it, requiring cogent justification for its restriction. … The mere publication of embarrassing or damaging material is not a good reason for restricting the reporting of a judgment, as the authorities make clear.*

22. By Rule 50 of the ET Rules, the Tribunal can make an appropriate order to restrict the principle of open justice in three situations: (a) if it is necessary in the interests of justice; (b) if it is required to safeguard the rights of any person under the European Convention on Human Rights ("Convention rights"); or (c) where evidence given will involve particular confidential information.

23. By Rule 59(3)(b) one of the types of order which can be made is an Anonymity Order, which is:

    an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record.

24. The burden of establishing any derogation from the general principle lies on the person seeking it and must be established by clear and cogent evidence (*British Broadcasting Corporation v Roden* [2015] IRLR 627 EAT; *Fallows v News Group Newspapers Ltd* [2016] IRLR 827 EAT). The question for the Tribunal is whether it is in the public interest that the principle of open justice be derogated from. The factors that the Tribunal must weigh in the balance include: (a) the extent to which the derogation sought would interfere with the principle of open justice; (b) the importance to the case of the information which the applicant seeks to protect; and (c) the role or status within the litigation of the person whose rights or interests are under consideration.

25. Where a privacy order is sought on the ground that it is required to protect a person's Convention rights, the Tribunal must first identify whether there is a Convention right which needs protection, and if so secondly to balance the interference with that Convention right against the interference with the principle of open justice and freedom of expression.

26. If the Convention right relied on is Article 8 (the right to private and family life), the Tribunal must consider whether there is a reasonable expectation of privacy (see *R (Catt) v Association of Chief Police Officers* [2015] UKSC 9 per Lord Sumption).

27. In *R v Legal Aid Board ex p Kaim Todner* [1999] QB 966 the Court of Appeal said that "If the interference is for a limited period that is less objectionable than a restriction on disclosure which is permanent. If the restriction relates only to the identity of a witness or a party this is less objectionable than a restriction which involves proceedings being conducted in whole or in part behind closed doors".

Decision on the Claimant's application for an Anonymity Order

28. The Tribunal found that the Claimant had not satisfied the burden of showing that the strong principle of open justice should be displaced in this case.

29. The application appeared to be put on the basis that publication of the Claimant's name in the judgment would interfere with his and his brother's Article 8 rights. Whilst the Tribunal accepts that this right is in play, we do not accept that either the Claimant or his brother has a reasonable expectation of privacy in relation to these proceedings, or that either of them would be likely to be subjected to any particular interference with their Article 8 rights by reason of the Claimant having engaged in the Tribunal process in the normal way. Any interference with the Article 8 rights of the Claimant and/or his brother was heavily outweighed by the importance of the principle of open justice.

30. The Claimant did not identify any particular features of the case which distinguished it from other cases heard by the Tribunal. All Claimants face the prospect of future employers discovering that they have brought a case against their former employer. There was no evidence whatsoever – let alone clear and cogent evidence – to support the Claimant's submission that either he or his brother would suffer prejudice in the employment market because the Claimant had exercised his democratic right to pursue a case in the Tribunal. The Claimant's submissions on this point were based purely on speculation.

31. As for the Claimant's disability, he did not appear to be arguing that he would suffer any particular consequence if future employers were to come to know that he was deaf in one ear. In fact, the prejudice that he relied upon – people thinking he was stupid or arrogant – arose out of people not knowing that he was partially deaf. There was no reason supported by evidence why the principle of open justice should be displaced in order to grant the Claimant anonymity because of his disability.

32. For those reasons the Tribunal dismissed the application.

The Claimant's application to amend the claim

33. On the first day of the hearing the Claimant pursued an application to amend his claim to add a whistleblowing complaint.

34. The possibility of a whistleblowing complaint first arose at the Preliminary Hearing on 12 April 2023. It is apparent from the Case Management Order sent to the parties on 16 May 2023 that during that hearing the Employment Judge suggested that the facts relayed to her by the Claimant may indicate a whistleblowing complaint. She stated that the ET1 did not contain a whistleblowing complaint, but set down directions for the Claimant to apply to amend his claim. In her written Order she made a careful list of the details that the Claimant's application would have to contain. The deadline for the application to amend was given as 10 May 2023. The Tribunal has noted that this preceded the date on which the Order was sent to the parties.

35. The Claimant made a written application to amend his ET1 on 30 August 2023, more than three months after the deadline and less than a month before the final hearing. He had not sent any communication to the Tribunal or the Respondents about his proposed amendment before this date. The application contained a number of fresh factual allegations. On 8 September 2023 the Respondent resisted the application and applied for the final hearing to be converted to a Preliminary Hearing to hear the application. The Tribunal informed the parties that the matter would be considered at the outset of the final hearing.

36. At the hearing we took evidence under oath from the Claimant about the timing of his application and we heard submissions from both parties.

37. The Claimant said in evidence that he had not made the application before the deadline because he was the sole carer of a relative with multiple serious health issues and because he had been threatened with eviction from his accommodation at the end of April 2023. He did not provide any documentary

or other corroborating evidence relating to these factors. He said that he had known about the impending eviction since April 2022. He said that as a result of these factors he had been too stressed to make the application earlier. He did not produce medical evidence relating to any mental health issues at the relevant time. He referred the Tribunal only to an exchange of correspondence with a counsellor in May 2022. He said that he did not have any mental health diagnosis. He accepted that "the fault is mine" in relation to the delay in making the written application.

38. In discussion with the Employment Judge about the contents of his written amendment application, the Claimant identified three protected disclosures. Two of these consisted of complaints about visitors and staff being permitted into the workplace without appropriate DBS checking. The Claimant could not identify which legal obligation was engaged in relation to these alleged protected disclosures. The third disclosure was a complaint that a colleague had taken a photo of him. Again, he could not identify a legal obligation, other than to suggest that it was against the law to undertake "surveillance photography".

39. The Claimant stated that he did not consider that the alleged disclosures were the reason or the principal reason for his dismissal. Rather, he said that the disclosures "played a part" in his dismissal. He said that he did not rely on any detriments short of dismissal.

40. Ms Sodhi for the Respondent resisted the application on similar grounds to those advanced in its written response of 8 September 2023. She said that the amendment was a substantive one and not a relabelling exercise, that the Claimant had not adequately explained the lateness of the application and that the proposed amendment had no prospects of success. She relied on the Overriding Objective and the guidelines in *Selkent Bus Co v Moore* [1996] IRLR 661. She said that the balance of prejudice was clearly with the Respondent, since if the amendment were permitted the final hearing would need to be postponed and significant further work undertaken to prepare the case as it was now put.

<u>The law on amending the claim</u>

41. The principles relevant to the amendment of claims are described in *Selkent Bus Co v Moore* [1996] IRLR 661. The Tribunal should consider:

    41.1. the nature of the amendment;

    41.2. the applicability of statutory time limits; and

    41.3. the timing and manner of the application.

42. The Tribunal should take into account all the circumstances and balance the hardship and prejudice of allowing the amendment against the injustice and hardship of refusing it.

43. The discretion to permit a party to amend its claim is not unconfined. An ET1 is "not something just to set the ball rolling " (*Chandhok v Tirkey* [2015] IRLR 195*).*

Decision on the Claimant's amendment application

44. The Tribunal did not permit the Claimant to amend his claim to add a whistleblowing complaint for the following reasons.

45. The amendment was a substantive one, adding a new cause of action. The ET1 did not contain a whistleblowing complaint or any allegations which could be interpreted as amounting to a whistleblowing complaint. The ET1 stated that the Claimant's colleague had taken a photo of him and that he had sought to raise this with management, but did not state that he had been subjected to any detriment or had been dismissed because he had complained about it. The other facts relied on did not appear in the ET1.

46. The amendment was significantly out of time. The Claimant was dismissed on 6 May 2022. No good reason was given for the delay in making the application and the Tribunal was far from satisfied that it was not reasonably practicable for the Claimant to make the application within the statutory time limit. Nor did the Tribunal consider that the application was made within a reasonable time after the expiry of the deadline.

47. As for the timing and manner of the application, the Tribunal was not persuaded by the Claimant's reasons for failing to comply with the deadline of 10 May given to him at the PH. He did not provide any evidence to corroborate his account of mental ill health arising from caring responsibilities or his threatened eviction. He had known of the impending eviction for a year, and yet when he had the opportunity to speak to the Employment Judge at the Preliminary Hearing he did not request a later deadline. Furthermore, writing the amendment application was not an onerous job.

48. Still less onerous would have been sending an email to the Tribunal and the Respondent explaining that he was having difficulties and requesting an extension, but the Claimant did not do this and gave us no satisfactory explanation for his failure to do so. He said only that he was awaiting "instructions" from the Tribunal as to how to make an amendment application. The Tribunal considers that the Case Management Order contained all the information the Claimant needed in order to make the application. He also said that in early September, when the First Respondent objected to his application, he was going through an interview process and starting a new job.

49. The Tribunal did not accept that any of these reasons were the reason for the Claimant's failure to comply with the deadline for making the amendment application or to send it within a reasonable time thereafter.

50. In any event, the proposed amendment was without merit. The Claimant was unable to identify which, if any, legal obligations underpinned his alleged protected disclosures. He stated in terms that he did not argue that the alleged protected disclosures were the reason or principal reason for his dismissal, and also stated that he did not allege that he had been subjected to any detriments short of dismissal because he made the alleged protected disclosures.

51. In that light, the Tribunal considered the balance of prejudice to lie squarely with the Respondent. If the amendment were allowed it would have been inevitable that the final hearing would have to be postponed and that the Respondent

would have to amend its ET3 and undertake further preparatory work. This would incur substantial further expense for the Respondent. The prejudice to the Claimant is simply that of not being able to pursue a complaint which is without merit.

The Claimant's application for a postponement

52. Having given its decisions on the Claimant's privacy order and amendment applications ("the decisions") on the first day of the hearing, the Tribunal delivered its full oral reasons for the decisions on the morning of the second day. The Claimant requested written reasons for the decisions so that he could consider whether to seek a reconsideration. The Employment Judge explained to him that it would take some days or weeks for written reasons to be sent to the parties, and that if he wished to seek a reconsideration of the decision not to make a privacy order it would seem more sensible for him to do so before the hearing was conducted and judgment given in public. The Claimant stated that he had not been able to follow the oral reasons because of his disability. He asked for a postponement of the hearing in order to receive the written reasons and take advice.

53. In his application for a postponement the Claimant stated that:

    53.1. He was a lay person.

    53.2. If he was not given time to fully comprehend the decisions his case would be prejudiced.

    53.3. In particular, the failure of the Respondent's management to investigate his complaint about a colleague taking a photo of him was part of his disability discrimination complaint, although it was not in the List of Issues set out in the Case Management Orders of 16 May 2023 and he did not recall having mentioned it at the Preliminary Hearing.

    53.4. The reason why he had not been able to follow the oral reasons properly was because he needed to be able to lip read. It was easier to lip read face to face. He accepted that at the Preliminary Hearing he had not asked for an in person hearing and that at the beginning of the current hearing he had not mentioned that he was reliant on lip reading or that he would have any cognitive difficulties connected with his disability.

    53.5. He said the difference between the Preliminary Hearing and the current hearing was that he was given the Case Management Orders in writing and the Employment Judge explained things to him in a way he could understand.

54. The Respondent resisted the application. Ms Sodhi said that:

    54.1. If the Claimant had made his applications for a privacy order and amendment of the claim in good time, the Tribunal would have been able to hear them and give written reasons in advance of the final hearing. It was therefore a direct consequence of his delay in making those

applications that he had not been able to get written reasons prior to this point.

54.2. The Claimant had not mentioned lip reading at the Preliminary Hearing. Nor had he said at the Preliminary Hearing that an in person hearing would be preferable.

54.3. Paragraphs 5 and 6 of the Case Management Orders of 16 May 2023 showed that the Employment Judge had enquired whether the Claimant needed any particular adjustments, and he had stated that he did not. The Employment Judge had told him that "*if, in the meantime, he thinks of any adjustments he will need to assist him with the final hearing, he should write to the Tribunal and the respondents to set out what adjustments he needs".* He had not done so in the five months since the Preliminary Hearing.

54.4. The allegation about the colleague taking a photo of the Claimant was discussed in detail at the Preliminary Hearing. The Employment Judge had not been able to identify how it was linked to the Claimant's disability. The List of Issues was agreed at the Preliminary Hearing and the Claimant had not raised any issues with it since then.

54.5. The Case Management Order was not given in writing until 16 May 2023, over a month after the Preliminary Hearing.

54.6. The Claimant had had time to seek legal advice.

54.7. The Claimant had acted in an obstructive manner throughout the proceedings.

Law on applications for postponement

By Rule 29 of the ET Rules an Employment Tribunal may make a Case Management Order at any stage of the proceedings, on its own initiative or on application, including an Order that a hearing be postponed. In considering any application for a postponement the Tribunal must pay due regard to the Overriding Objective in Rule 2 of the ET Rules. The Tribunal must also have regard to the Presidential Guidance on Seeking a Postponement of a Hearing of 4 December 2013 (the Presidential Guidance") and should consult the Equal Treatment Bench Book as appropriate.

Decision on the Claimant's postponement application

Having regard to the Overriding Objective, the Presidential Guidance and the Equal Treatment Bench Book, the Tribunal decided to reject the Claimant's application for a postponement of the hearing.

55. For the following reasons we did not accept that the Claimant has any particular difficulty in absorbing information given to him orally because of his disability:

55.1. His job for the Respondent involved taking information on the telephone whilst inputting it onto a computer, and the Preliminary Hearing was held by telephone. These factors were inconsistent with his contention that he

has difficulty with absorbing information provided orally, although the Tribunal noted that the Claimant's disability impact statement says that he had some difficulties with using the phone when working for the Respondent. He did not bring this to our attention when making this application, and the Respondent maintains that he did not complain about it at the time.

55.2. He had not mentioned at the Preliminary Hearing that he had difficulties with comprehending information given orally or that he was reliant on lip reading.

55.3. It was clear from the Case Management Order of 16 May 2023 that the Claimant had been happy to proceed with the final hearing via CVP and use headphones. We accepted Ms Sodhi's submission that the Claimant had said at the Preliminary Hearing that he had no preference as to whether the final hearing was conducted by CVP or in person.

55.4. He was invited by the Employment Judge at the Preliminary Hearing to write to the Tribunal if any further adjustments were required, but he did not do so.

55.5. In some respects he had not paid attention to the written Case Management Order issued on 16 May 2023. For example, he had not engaged with the fact that the Order gave a deadline of 10 May for his amendment application. When he did make the application on 30 August 2023, he did not include in it the information carefully described in the Case Management Order. This indicated that having things in writing did not appear to make the difference he claimed.

55.6. At the outset of the current hearing he had been asked whether he needed any adjustments, and he said he did not.

55.7. He did not mention lip reading, difficulty taking notes or cognitive impairment until the Tribunal proposed to begin the substantive hearing on the morning of day two.

55.8. The Tribunal did not observe that the Claimant had any difficulty in understanding what was said to him or in responding.

55.9. He referred to no medical evidence supporting his assertion that he had difficulty with absorbing information given orally.

56. The Tribunal did not accept that the Claimant is at any more of a disadvantage than any other unrepresented litigant. The Tribunal is mindful of the disadvantages faced by unrepresented litigants, as set out in Chapter 1 of the Equal Treatment Bench Book, and that it is required by the Overriding Objective to seek to ensure that there is equality of arms between the parties. We consider that we did so in this case by giving the Claimant adequate time and opportunity to state his position and by giving clear explanations of the process and our decisions as we proceeded. However, ultimately we did not accept that his reasons for making the application were candid.

57. Furthermore, the Claimant suggested no basis for a possible reconsideration application or appeal in relation to either of the decisions that we had made. The Tribunal does not, as a rule, postpone final hearings in order for litigants to receive written reasons for case management decisions made in the course of the hearing. We could see no reason to depart from that practice on this occasion. We were now almost half way through the final hearing and had not commenced the substantive case. It was neither in the interests of justice nor fair to the Respondent to postpone it or delay it further.

Postponement of the Tribunal's own motion

58. Whilst the Tribunal was deliberating on the Claimant's postponement application, we were informed by the Tribunal Clerk that she had received information that the Claimant was having technical difficulties with his CVP connection. We were provided with a record of the Claimant's telephone contact with the Tribunal centre, which showed that:

    58.1. The Claimant had called at 11:17amasking for the hearing not to be restarted until he had established a connection, and had been provided with the phone number for the Tribunal's IT Support team.

    58.2. At 11:38am the Tribunal was informed that IT Support team had tried everything but could not fix the problem, and that the Claimant would not be able to attend the hearing.

59. The Tribunal Clerk informed us that she had tried to phone the Claimant on two mobile phone numbers that were held on file for him. The first number rang out and then gave an unobtainable tone, and the second number rang out. The Tribunal Clerk had also attempted to email the Claimant but had received no response and no bounce back.

60. At 12:16pm we reconvened the hearing since we had seen no evidence that the Claimant had attempted to explain the situation or to establish contact with the Tribunal in the past half an hour. We explained the developments to Ms Sodhi but we did not deliver our decision or reasons on the Claimant's postponement application, since he was not present to hear it.

61. At 12:25pm the Claimant emailed the Tribunal Clerk stating that he had been on the telephone with IT Support for 30 minutes. He had seen that he had missed calls from an unknown number but had not wanted to terminate his call with IT Support in order to pick up the call. He wanted to know what to do next.

62. We adjourned again for Ms Sodhi to take instructions from her client and for the Tribunal to consider what action to take.

63. The Tribunal asked the Tribunal Clerk to attempt to telephone the Claimant again to ask him to attend the hearing by telephone to hear the decision on his postponement application and discuss the conduct of the remainder of the hearing. We considered that this would be a proportionate action to take, and that the Claimant would then have the lunch hour to try to fix his technical issues.

64. At 12:30pm the Tribunal Clerk attempted to telephone the mobile phone number given on the Claimant's ET1. The call was picked up by the Claimant's sister, who said that she would send the Claimant a message.

65. At 12:35pm the Claimant sent an email to the Tribunal Clerk which said *"I requested a video call hearing because of my disability, so I am unable to continue just on the telephone. Can you please call me back so I can explain this?"*

66. We asked the Tribunal Clerk to phone the Claimant on the second mobile phone number held on file and to ask him why he was not able to join the hearing on CVP via his mobile phone. She did so. The Claimant said that the screen on his mobile phone was too small for lip reading. He also said that on the first day of the hearing he had been using a friend's laptop, but that was no longer available. He said that he did not have access to any other device. His own device was frozen.

67. At our request the Tribunal clerk spoke to the Claimant again to inform him that he was required to join by telephone to discuss how the hearing might be conducted. He told her that he was not able to phone in because he has got a disability, that it was too much information and he could not take it in, and that he was not able to understand what was being said and needed something in writing.

68. At 12:53pm the Claimant emailed the Tribunal Clerk as follows:

    As I explained on the phone, I cannot continue the hearing via telephone because it puts me at such a disadvantage due to my hearing disability.

    I have tried to explain this numerous times over the phone but there seems to be a miscommunication – I am not sure why as I am trying to put across how my hearing disability affects me.

    I cannot receive all this new information via the telephone. You just explained that the hearing is not continuing but that the Judge wants to give me further reasons over the phone, which I have explained I am unable to comprehend over the telephone under all this stress due to my disability.

69. At 12:57pm we reconvened the hearing and explained the latest developments to Ms Sodhi. She pointed out that the Claimant had had no difficulty in participating in the Preliminary Hearing on 12 April 2023 by telephone, and that his job for the Respondent was telephone based. She said he had never raised any issue about having difficulty using the telephone.

70. In all the circumstances the Tribunal considered it necessary to postpone the final hearing and to issue an Unless Order to the Claimant requiring him to provide a written explanation, with documentary evidence as available, to explain his inability to rejoin the hearing. The Unless Order will be sent separately. Our reasons were as follows:

    70.1. The Claimant had made it clear that he did not intend to rejoin the hearing by any means. There was no indication that he intended to do so either on the afternoon of day 2 or on day 3.

70.2. It was neither appropriate nor fair either to proceed with the hearing in the Claimant's absence or to strike out the claim, since he had given some explanation of his failure to rejoin the hearing.

70.3. Nonetheless the Tribunal was dissatisfied with the explanation thus far given by the Claimant. For the reasons given in our decision on the Claimant's postponement application (above), we had not accepted that the Claimant suffered a disadvantage in participating by telephone or in receiving information given orally.

70.4. We concluded that the Claimant should be given an opportunity to produce an account of: (a) his claim that technical issues and/or unavailability of alternative devices prevented him from rejoining the hearing; and (b) his claim that for reasons connected with his disability he was unable to participate in the hearing by telephone.

71. Ms Sodhi accepted that the Tribunal was faced with no other option than to postpone the hearing. She stated that in due course the Respondent intended to seek a costs order against the Claimant. She also stated – and the Tribunal agreed – that it would be preferable for any future hearing in this case to be conducted in person.

72. Given the Claimant's difficulties with his computer we considered it appropriate for the Tribunal to send this judgment and any other communications to him by post as well as by email.

73. Accordingly the hearing was postponed. If the Claimant complies with the Unless Order it is likely that a further Preliminary Hearing for case management will be required before the final hearing can be relisted.

Employment Judge Reindorf KC

Date 29 September 2023

Sent to the parties on:

5 October 2023

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For the Tribunal:

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